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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/580,865	03/16/2007	Peter Kwasny	7472-104	7050
62836	7590	02/18/2011	EXAMINER	
BERLINER & ASSOCIATES			KIM, CHRISTOPHER S	
555 WEST FIFTH STREET			ART UNIT	
31ST FLOOR			PAPER NUMBER	
LOS ANGELES, CA 90013			3752	
MAIL DATE		DELIVERY MODE		
02/18/2011		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/580,865

Applicant(s)

KWASNY, PETER

Examiner

Christopher S. Kim

Art Unit

3752

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-7, 9-20 and 22-28 is/are pending in the application.
- 4a) Of the above claim(s) 2-7, 9-20 and 23-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22, 27 and 28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 March 2007 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No.(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The response filed on December 20, 2010 is acknowledged.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Election/Restrictions

3. Applicant elected without traverse Species D (figure 4) in the reply filed on June 26, 2009 .
4. Claims 2-7, 9-20, 23-26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on June 26, 2009.

Drawings

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "aerosol can" recited in claim 27 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate

prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

6. Applicant is advised that should claim 22 be found allowable, claim 27 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

The preamble "an aerosol can" fails to recite any structure. The body of a claim fully and intrinsically sets forth all of the limitations of the claimed invention. The preamble is not considered a limitation. MPEP 2111.02.

Claim Rejections - 35 USC § 102

7. Claims 22, 27, 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Beres et al. (3,393,844).

Beres discloses a spray head comprising:

- an axial borehole 19;
- an adjustment device 36 comprising:
 - a rotatable cylindrical element 42;
 - a tapering end portion 44;
- a lateral bore 34, 26;
- an outlet 28.

The non-symmetrical cone shaped portion is non symmetrical when the depression 44 is on one side of a plane through valve 36.

The recitation "inserts into the lateral bore from said other end" does not require an insertion into the lateral bore along the longitudinal axis of the lateral bore, i.e., from the "other end" toward the "outlet at one end."

Regarding claim 28, any fluid dispensed by the Beres can be considered a painting preparation agent because the recitation "painting preparation" merely indicates intended use of the "agent."

8. Claims 22, 27, 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Clarke (248,555).

Clarke discloses a spray head comprising:

- an axial bore (bore in elbow D having aperture c');
- an adjustment device B;
- a lateral bore (bore through shell A);
- the adjustment device B comprising:
 - a rotatable cylindrical element B;
 - a tapering end portion (portion having aperture c);
 - a flow opening c'.

The preamble merely names the device and does not device structure. The body of a claim fully and intrinsically sets forth all of the limitations of the claimed invention. The preamble is not considered a limitation.

The recitation "cylindrical element" merely requires a cylinder like element.

9. Claims 22, 27, 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Tibbals (1,214,971).

Tibbals discloses a spray head comprising:

- an axial bore 14, 16, 17;
- an adjustment device 15;
- a lateral bore 18, 19;
- the adjustment device comprising:
 - a rotatable cylindrical element 15;
 - a tapering end portion (portion of valve 15 that seats on seat 21);
 - a flow opening 14.

Response to Arguments

10. Applicant's arguments filed December 20, 2010 have been fully considered but they are not persuasive.

Applicant argues that none of the lateral bores in Beres extends through the spray head. In Beres, bores 26 and 34 are continuous and constitute applicant's "lateral bore. Bores 26 and 34 extend through the spray head 12.

Applicant argues that Beres fails to disclose a cylindrical element inserted into the lateral bore from the end. The cylindrical element 42 is inserted into the lateral bore end at the bottom end of 34 as shown in figure 2.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. Kim whose telephone number is (571) 272-4905. The examiner can normally be reached on Monday - Friday, 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on (571) 272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher S. Kim/
Primary Examiner, Art Unit 3752

CK